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SARAWAK FORESTRY DEPARTMENT v. SIN LEE LEE TIMBER (1979) CO

HIGH COURT SABAH & SARAWAK, KUCHING
ALWI WAHAB JC
[CRIMINAL APPEAL NO: KCH-42(Ors)-1-7-2015]
B 9 DECEMBER 2015

FORESTRY: *Seizure – Seizure of lorries – Lorries seized by Sarawak Forestry Department – Application by owner for release and return of lorries made under s. 407 of Criminal Procedure Code – Whether provision correctly applied – Whether*
C *lorries can be released pursuant to s. 407(2) of Criminal Procedure Code when there is specific provision under s. 74(1) of Forestry Ordinance (Sarawak) (Cap 126)*

Two lorries ('the lorries') belonging to the respondent were seized by the appellant, pursuant to s. 71(1) of the Forest Ordinance (Sarawak) (Cap 126) ('the Ordinance'). The respondent applied to the Sessions Court for the
D release and return of the lorries under s. 407 of the Criminal Procedure Code ('the CPC'). In allowing the application, the Sessions Court Judge ('SCJ') was of the view that s. 407(2) of the CPC was correctly applied for the release of the lorries to the respondent. Hence, the present appeal. The primary issue at hand was whether the Sessions Court has the power to order the release
E of the lorries pursuant to s. 407(2) of the CPC when there is a specific provision under the Ordinance which provides for the disposal of the subject matter seized by the forest officer under the Ordinance.

Held (allowing appeal):

F **(1)** The SCJ had wrongly applied s. 407(2) of the CPC when she made an order for the release of the lorries to the respondent. Section 407 is a general provision and has general application. The legal maxim *generalibus specialia derogant* should have been applied in the present case since the Ordinance has a specific provision to deal with the disposal of
G the lorries. (para 8)

(2) Section 74(1) of the Ordinance is a specific provision that should have been applied in dealing with the seizure of the lorries by the appellant where there was a reason to believe that a forest offence had been committed pursuant to s. 71(1) of the Ordinance. This provision takes
H precedent over the general provision of the CPC. The lorries were to be returned to the appellant for disposal according to the provision of the said Ordinance. (paras 6, 8 & 10)

Case(s) referred to:

Kerajaan Malaysia v. AmBank (M) Bhd [2009] 2 CLJ 91 HC ***(refd)***
I *PP v. Chew Siew Luan [1982] CLJ 354; [1982] CLJ (Rep) 285 FC* ***(refd)***

Legislation referred to:
Criminal Procedure Code, s. 407(2)
Forest Ordinance (Sarawak) (Cap 126), ss. 71(1), (2), 74(1)
Subordinate Courts Act 1948, s. 111

For the appellant - Mirza Mohamad; DPP
For the respondent - Fung Lee Fook; M/s Fung Lee Fook Advoc

Reported by Najib Tamby

JUDGMENT

Alwi Wahab JC:

Introduction

[1] The appeal before this court is in respect of the learned Sessions Court Judge's ("SCJ") order dated 15 July 2015 for the release of two unit of lorries ie, QKC7028 and QKA692 to the applicant ("the respondent") under s. 407(2) of the Criminal Procedure Code ("CPC").

Facts

[2] The said two lorries were seized by the appellant on 29 May 2015 and 30 May 2015 respectively by virtue of s. 71(1) of the Forest Ordinance (Cap 126) (Sarawak) ("the Ordinance"). Section 71(1) refers to the seizure by any of forest officer or police officer and s. 71(2) of the Ordinance states that without undue delay, a report of such seizure shall be made to a Magistrate having jurisdiction to try the offence. By virtue of s. 111 of the Subordinate Courts Act 1948, the term Magistrate referred to in s. 71(2) of the Ordinance shall be substituted with the words "Sessions Court".

[3] By way of notice of motion dated 17 June 2015, the respondent put up an application under s. 407 of the CPC for the two lorries be released and returned to the respondent.

[4] In her ruling, the learned SCJ was of the view that s. 407(2) of the CPC was correctly applied for the release of the two lorries to the respondent. Section 74 of the Ordinance can only be applied for disposal of property seized in respect of an offence if the offender cannot be found.

Issue

[5] Whether the Sessions Court has the power to order the release of the two lorries pursuant to s. 407(2) of the CPC when there is a specific provision under the Ordinance which provides for the disposal of the subject matter seized by the forest officer under the Ordinance.

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Court's Findings

[6] There is a specific provision ie, s. 74(1) of the Ordinance which should have been applied in dealing with the said lorries seized by the appellant where there is reason to believe that a forest offence has been committed pursuant to s. 71(1) of the Ordinance. In the present case, there is still no charge preferred by the appellant as the offender is still unknown although the said lorries were registered under the respondent's name.

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[7] The argument by the respondent is misplaced in that since the owner of the two lorries is known to the appellant, as shown in exh. C3 and exh. C4 that the two lorries were registered under the name of the respondent, s. 74 of the Ordinance could not therefore be applied and its application would dislodge the jurisdiction of this court under s. 407(2) of the CPC.

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[8] In my view, the learned SCJ had wrongly applied s. 407(2) of the CPC when she made an order for the release of the two lorries to the respondent. Section 407 is a general provision and has general application. The legal maxim "*generalibus specialia derogant*" should be applied in the present case since the Ordinance has a specific provision ie, s. 74(1) to deal with the disposal of the two lorries. This specific provision takes precedent over the general provision of the CPC (*Public Prosecutor v. Chew Siew Luan* [1982] CLJ 354; [1982] CLJ (Rep) 285).

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[9] Such principle was also applied in the case of *Kerajaan Malaysia v. AmBank (M) Berhad* [2009] MLJU 890 which stated that:

> Where a special provision is made in a special statute that special provision excludes the operation of a general provision in the general law - *generalibus specialia derogant* ...

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[10] In the circumstances, the appeal is allowed. The order by the learned SCJ is set aside. The two lorries are to be returned to the Forestry Department for disposal according to the provision of the said Ordinance.

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